IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4108 OF 2006

IN

ARBITRATION PETITION NO.506 of 2004

Kantilal Vardhan .. Petitioner

versus

Libord Securities Ltd. & ors. .. Respondents

...

Mr.Bipin Jagaje i/b Savita Suryavanshi for the petitioner.

Mr.H.V. Chande for the respondents

CORAM : D.G. KARNIK,J.

DATED : 24th January 2007.

P.C.:

1. Heard counsel for the parties.

2. This motion is taken out by the petitioner for quashing and setting aside the order dated 21st

November 2005 passed by the Prothonotary & Sr. Master rejecting the Arbitration Petition (Lodging) no.597 of 2004 under Rule no.986 of the Bombay High Court (Original Side) Rules for non removal of the office objections. The impugned order was passed by Prothonotary on 21st November 2005. The impugned order is not annexed to the motion and the motion is liable to be rejected on this ground alone. I am however not dismissing the motion on that ground but also on other grounds mentioned below.

3. Under Rule 133 an application for setting aside the order of dismissal for non removal of the office objections is required to be made within four days from the date of the passing of the order. The impugned order was passed on 21st November 2005. Motion is taken out on 23rd November 2006 i.e. after expiry of one year and two days. Thus, there is a delay of nearly one year in filing the motion. The affidavit in support of the motion does not satisfactorily explain the delay. In paragraph no.3 of the affidavit, it is only stated that the petitioner was out of Mumbai and was not available when the advocate tried to contact him. Surely the petitioner was not out of Bombay for one year. It is

for this reason that the petitioner has not given the dates when he was out of Bombay. Another reason given for condonation of the delay is that the order was not legible. The petitioner knew that the order was of dismissal and that was clear from the order. The petitioner has not even obtained a certified copy and not annexed even an ordinary copy of the order to this motion which only indicates the negligence on the part of the petitioner.

4. There is no prayer for condonation of the delay.

5. Since no sufficient reason has been mentioned for condonation of the delay, motion is dismissed.

D.G. KARNIK, J